

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Schuler et al	Group Art Unit: 3734
Application No: 09/731,316 Confirmation No: 1043	Examiner: Mendoza, Michael G.
Filed: December 5, 2003	Attorney Docket No: NK.0051.00 (53247-US-CNT)
Title: SYSTEMS AND METHODS FOR TREATING PACKAGED POWDERS	June 29, 2009 San Francisco, California

**REPLY BRIEF**

VIA ELECTRONIC FILING

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Examiner:

In response to the Examiner's Answer mailed on April 28, 2009, the Applicant of the above-referenced patent application (hereinafter Appellant) hereby maintains the appeal to the Board of Patent Appeals and Interferences. Appellant requests the reversal of the Final Rejection.

**Certificate of Transmission**

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By: Melanie Hitchcock

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Date: June 29, 2009

### ***Status of Claims***

Claims 1-50 and 52-63 are presently pending in the case. Claim 51 has been cancelled. Claims 1-18, 21, 23-29, 35-39, 43-49, 61 and 62 have been finally rejected. Claims 52-60 have been allowed. Claims 19, 20, 22, 30-36, 40-42, 50 and 63 have been objected to as dependent claims containing allowable subject matter. The appeal of the rejection of each of claims 1-18, 21, 23-29, 35-39, 43-49, 61 and 62 is hereby maintained.

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***Grounds of Rejection to be Reviewed on Appeal***

Appellant continues to request review of the Examiner's following grounds of rejection:

Claims 1, 3-7, 11, 15, 16, 18, 21, 25-29, 38, 39, 45-49, 61, and 62 have been rejected under 35 USC 103(a) as being unpatentable over U.S. Patent 5,740,794 to Smith et al (hereinafter Smith et al) in view of PCT Publication WO 99/44663 to McGinn et al (hereinafter McGinn et al).

Claims 1, 8-11, 13-15, 23, 24, 26, 27, 37, 43-45, and 61 have been rejected under 35 USC 103(a) as being unpatentable over Smith et al in view of US Patent 5,694,920 to Abrams et al (hereinafter Abrams et al).

Claim 2 has been rejected under 35 USC 103(a) as being unpatentable over Smith et al and McGinn et al further in view of U.S. Patent 6,167,880 to Gorda et al (hereinafter Gorda et al).

Claim 12 has been rejected under 35 USC 103(a) as being unpatentable over Smith et al and McGinn et al further in view of Abrams et al.

## ***Argument***

Appellant believes each of claims 1-18, 21, 23-29, 35-39, 43-49, 61 and 62 are improperly rejected and are therefore allowable for the reasons set forth in Appellant's Appeal Brief filed on September 28, 2007. The present Reply Brief is being filed to specifically address some of the issues raised by the Examiner in the Examiner's Answer mailed on August 21, 2007. The comments herein are merely supplemental to the arguments made in the Appeal Brief and are not meant to replace those arguments.

### The Examiner's comments in Examiner's Answer only illustrate Appellant's argument

As discussed in depth the Appellants Appeal Brief, claim 1 is not rendered unpatentable by Smith et al and McGinn et al and/or Abrams et al because none of the references teaches all the features claimed in claim 1, and even if combined, a method that results from the combination would also not include all features claimed.

The Examiner correctly points out in the Examiner's Answer that the aerosolization mechanisms taught by Smith et al, McGinn et al and Abrams are alternatives (see page 8 lines 16-20 of Examiner's Answer). Therefore, if one of ordinary skill in the art were to make the modification proposed by the Examiner, a substitution of one aerosolization mechanism for another would result and the resulting substitution would not result in a method that includes all steps recited in claim 1. Instead, one aerosolization mechanism would be replaced with another.

There is no reason why one of ordinary skill in the art would have found it obvious to combine two independent aerosolization mechanisms. Thus, the Examiner has used impermissible hindsight reasoning to suggest Appellant's claim 1 is obvious. There is no reason to provide more than one aerosolization mechanism because once a powder is aerosolized, it is aerosolized, and there would be no point in providing another aerosolization mechanism.

Furthermore, none of the references teaches the application of a pulse of energy for increasing the efficiency of powder extraction. Instead, all pulses of energy in the references are provided for the aerosolization itself. Appellants have discovered that by providing a pulse of energy to the powder and **then** aerosolizing the powder, extraction of the powder can be more efficiently facilitated. No reference of record teaches these features.

For these reasons and for those given in the Appeal Brief, claim 1 is not rendered unpatentable by Smith et al, McGinn et al and/or Abrams et al. The other rejections are similarly improper.

## Conclusion

Thus, it is believed that all rejections made by the Examiner have been addressed and overcome by the above arguments and the arguments provided in the Appeal Brief. Therefore, all pending claims are allowable. A reversal is respectfully requested.

Should there be any questions, Appellant's representative may be reached at the number listed below.

Respectfully submitted,

JANAH & ASSOCIATES

Dated: June 29, 2009

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